IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

..

:: O R D E R ::

Amar Chand & Ors. Vs. State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.114/2006.

...

Date of Order :: 3rd July 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Usman Ghani, for the petitioners.

...

BY THE COURT:

The Petitioners, seven in number, have submitted this writ petition against the order dated 03.10.2005 passed by the Additional Collector, Bhilwara in Panchayat Revision No.10/2005 whereby the learned Additional Collector while accepting the revision petition has proceeded to set aside the sale of land in favour of the petitioner Nos. 1 to 5 by Gram Panchayat Bijoliyan on 30.10.1999 in File No.156/1995-96 opened in the name of the petitioner No.6 Ram Kumar.

The learned Additional Collector has proceeded to set aside the sale made in favour of the petitioner Nos. 1 to

5 essentially on the ground that they had no such right for which the land could have been sold to them by way of private negotiations. Learned Additional Collector held that the rights sought to be professed by way of an alleged surrender of land by the petitioner No. 6 Ram Kumar for the purposes of a school; then alleged alienation by the petitioner No. 6 in favour of the petitioner No. 7 Pannalal; and then alleged option stated by the petitioner No. 7 for granting pattas in favour of the petitioner Nos. 1 to 5 Amarchand, Nandlal, Kailash, Dhapu Bai and Jeetmal were fundamentally non-existent and the entire proceedings of the Panchayat were vitiated.

It shall be worthwhile to notice the matrix of facts as given out by the petitioners in this writ petition. According to the petitioners, the petitioner No. 6 Ram Kumar had a piece of land adjacent to the Government Girls Upper Primary School measuring 40' x 80' that he allegedly purchased on 28.12.1966 by way of a registered sale deed. The school sought to take over his land for its expansion to which he agreed on the condition of being allotted alternative land by the Panchayat. According to the petitioners, File No.156/1995-96 was opened on his application for exchange of land and thereafter on 11.04.1996 Gram Panchayat took a decision to allot free of cost a plot after surrender by the petitioner No. 6 of his land measuring 40' x 80' to the school. It has further

been averred that in pursuance of this decision, the said petitioner surrendered his plot to the Panchayat for expansion of the school building, the land was taken over and construction was raised. On the other hand, according to the petitioners, the Gram Panchayat prepared a site plan for allotment of the land and objections were invited but no final decision was taken although petitioner's plot was already got surrendered and possession was taken over by the school. The petitioners have thereafter narrated the so-called alienation by petitioner No.6 in the manner thus:

> "Then petitioner no.6 looking to his the then need transferred his rights to get the alternate land/patta in lieu of the land given for school building, to respondent no.7 but at that time no deed was executed."

It may be clarified that the averment aforesaid as stated in paragraph (6) of the writ petition purports to refer to 'respondent No.7' but obviously it refers to the petitioner No.7 Pannalal; and there are only three respondents in the writ petition. Then, according to the petitioners, the right to have alternative land was re-agitated; earlier the Panchayat was about to allot the land near Ambedkar Colony but due to some dispute it was not so allotted and the petitioners suggested another land situated at Pathik Nagar; File No.156/1995-96 was re-opened and notice inviting objections was issued on 05.08.1999 (Annex.P/4) and after considering the objections

the Panchayat on 30.10.1999 took the decision to allot a plot (half of 100' x 200'). The petitioners have averred that on the request of petitioner No.6 the Panchayat agreed to allot the plots to the petitioner Nos.1 to 5 and in view of difference of measurement decided to charge Rs.10/- per square feet extra and the petitioners on 22.11.1999 deposited the amount demanded. Coming into existence of the rights of the petitioners has been averred in paragraph (8) of the writ petition in the following manner:-

> "Then the respondent authorities asked to supply the deed/papers by which rights of the petitioner no.6 has been transferred and authority/consent for allotting the plots in favour of the petitioner no.1 to 5. Then a formal deed and consent letters were executed and a deed dt.8/11/99 was executed by the petitioner no.6 in favour of the petitioner no.7. Copy of this deed is filed herewith and marked as **ANNEXURE-P/6.** That petitioner no.7 on the basis of the rights got through Annexure P/6 given the consent/rights for having patta in favour of the petitioner no.1 to 5 instead of his name. Copy of this consent letter is filed herewith and marked as **ANNEXURE P/7**."

According to the petitioners, after accepting the surrender and taking the difference of price of Rs. 1,00,000/- that was deposited by the petitioners under receipt Nos. 572-575 dated 22.11.1999, the respondent No.2 Gram Panchayat issued four pattas in favour of petitioner Nos.1 to 5, one apiece for the petitioner Nos.1, 2 and 5 and another jointly in

favour of the petitioner Nos. 3 and 4; the petitioners were handed over possession of the land and they constructed boundary wall and raised some more construction over it. It has also been averred that the petitioner No.5 had sold his plot to some other persons by a sale deed dated 08.03.2002.

The transfer aforesaid in favour of the petitioner Nos. 1 to 5 was put to challenge by the respondent No.3 by filing a Revision Petition on 19.06.2003 under Section 97 of the Panchayati Raj Act, 1994 and it was alleged that while issuing pattas in favour of the petitioners, the mandatory requirement of the Rules 145 to 155 of the Rajasthan Panchayati Raj Rules, 1996 ('the Rules' hereafter) had not been followed and the pattas were liable to be cancelled. The petitioners resisted the aforesaid revision with the submissions that only Rule 156 was applicable to the case and that was followed as the plot in question could not be sold through auction and it was transferred by negotiation by charging additional price.

The learned Additional Collector while considering the revision petition noticed the following points for determination,-

> "1. आया गैरनिगराकार सं. 7 रामकुमार के द्वारा अपने स्वामित्व का भू-खण्ड रा.बा.उ.प्रा.वि. बिजौलिया को देते हुये उसकी ऐवज में अधिनस्थ ग्राम पंचायत से अन्य

स्थान पर भू-खण्ड की मांग की गई, जो नियमों में अंकित प्रावधानों के अनुरूप है।

2. आया गैरनिगराकार सं. 7 ने गैरनिगराकार सं. 8 के पक्ष में अपने स्वामित्व के भू-खण्ड को विधि के परिप्रेक्ष्य में विक्रय किया और विक्रय किये गये भू-खण्ड को गैरनिगराकार सं. 8 रा.बा.उ.प्रा.वि.बिजौलिया के पक्ष में देने के लिये अधिकृत होकर उसकी ऐवज में ग्राम पंचायत से अन्य स्थान पर भू-खण्ड लेने का अधिकारी था।

3. आया गैरनिगराकार सं. 8 ने रा.बा.उ.प्रा.वि. बिजौलिया को भू-खण्ड देने की सहमति के उपरान्त उसकी ऐवज में स्वयं के बजाय अन्य व्यक्ति गैरनिगराकार सं. 2 से 6 के पक्ष में पंचायत से भू-खण्ड आवंटन कराने के लिये अभिशंषा की है। गैरनिगराकार सं. 8 की यह अभिशंषा विधि के अनुरूप होकर अधिनस्थ ग्राम पंचायत ने गैरनिगराकार सं. 2 से 6 के पक्ष में जो भू-खण्ड विक्रय करने के आदेश पारित किये है, वो वैधानिक है।

4. आया निगराकार हितबद्ध पक्षकार नही होने से निगरानी प्रस्तुत नहीं कर सकता है। दोयम पंचायत राज नियमों में पंचायत के आदेश की अपील करने के प्रावधान होने से यह निगरानी चलने योग्य नहीं है।"

The learned Additional Collector dealt with the entire matter in thorough detail and on point No.1 observed that though a file was opened on the application of Shri Ram Kumar (petitioner No. 6 herein) for surrender of the land for the school and for allotment of alternative land; and a decision was taken by the Panchayat on 11.04.1996 for allotment of the land but the said order was never implemented and even otherwise the said order appeared to be doubtful and could not be termed as legal. On the crucial question involved in the case on point No.2 about the legality of alleged alienation in favour of the non-applicant No.8 (present petitioner No.7) by

the non-applicant No.7 (present petitioner No.6) and about his rights to receive alternative plot, the learned Additional Collector found that the land was surrendered by the non-applicant No.7 on 11.03.1996 and the same land was allegedly sold orally to the non-applicant No.8 (petitioner No.7) and such sale could not be treated to be legal and the alleged transferee could not have surrendered any right for the school and obviously would not get any right for allotment of alternative land. Petitioner Nos.1 to 5 being standing in the shoes of the petitioner No.7 and having been sold the land at the instance of the petitioner No.7, as a necessary consequence of the finding on point No.2, these petitioners were also held not entitled to any such sale. The learned Additional Collector has summed up his findings thus,-

> "उपरोक्त विवेचन से यह स्पष्ट होता है कि अधिनस्थ ग्राम पंचायत ने अपने प्रकरण सं. 156/95-96 दिनांक 30.10.99 से एक भू-खण्ड रा.बा.उ.प्रा.वि. बिजौलिया जिसे गैरनिगराकार सं. 8 ने विद्यालय के पक्ष में त्याग किया गया। उसके ऐवज में गैरनिगराकार सं.2 से 6 के पक्ष में भू-खण्ड विक्रय हेतु जो आदेश पारित किये है, उनके लिये पंचायत राज नियम 1996 में जो प्रावधान अंकित किये गये है, उनकी विधि की परिप्रेक्ष्य में पूर्ण रूप से पालना नही की गई है। नियमों के अन्तर्गत प्रत्येक व्यक्ति को भू-खण्ड विक्रय कराने के अलग-अलग पत्रावली का संधारण किया जाना चाहिये था, जो नही किया गया। यहां यह भी उल्लेख है कि जिस भू-खण्ड को गैरनिगराकार सं. 8 ने बिना वैधानिक स्वामित्व के विद्यालय के पक्ष में कथित त्याग किया गया है, ऐसे त्याग को नियमों के परिप्रेक्ष्य में वैधानिक दर्जा नही दिया जा सकता है तथा न इस प्रकार के भू-खण्ड की ऐवज में अन्य व्यक्ति गैरनिगराकार सं. 2 से 6 के पक्ष में जो भू-खण्ड विक्रय किये गये है, जिनकी

कोई वैधानिकता नही है। गैरनिगराकार सं. 7 या 8 से भूमि विद्यालय के नाम दर्ज हुई है तथा गैरनिगराकार सं. 7 ने गैरनिगराकार सं. 8 को उक्त भू-खण्ड विक्रय किया हो, इसकी कोई विधिक साक्ष्य नहीं है। गैरनिगराकार सं. 7 के स्कूल के पास के कथित स्वत्व के भू-खण्ड का कथित विक्रय से क्रेता के कहे अनुसार अन्य पांच व्यक्तियों को चार आवासीय भू-खण्ड 50 X 50 वर्गफीट के कुछ अतिरिक्त राशि लेकर दे दिये जाए। ऐसा करने की पंचायत की आपसी बातचीत से शक्ति हो, ऐसा नियमों में विहित नही है। उक्त भू-खण्ड 50 X 50 वर्गफीट के होकर खुली निलामी से ही विक्रय होने चाहिए । ऐसी स्थिति में निगराकार की और से प्रस्तुत निगरानी स्वीकार योग्य ठहराई जाकर अधिनस्थ ग्राम पंचायत के आदेश निरस्त योग्य है।"

The learned Additional Collector has, therefore, allowed the revision by the impugned order dated 03.10.2005 (Annex. P/12) and set aside the order dated 30.10.1999 and so also the sale of land in favour of the petitioner Nos. 1 to 5.

Assailing the order dated 03.10.2005, the petitioners have contended in this writ petition that the land was sold by way of private negotiations and hence only Rule 156 of the Rules would apply and the learned Additional Collector has acted wholly illegally in observing that the requirements of Rules 145 to 155 were not followed. It has been urged that the finding on point No.1 is wholly perverse and the same has been arrived at without considering the facts of the case and the law applicable to it. So far the alienation by the petitioner No.6 to petitioner No.7 and option

for allotment to the petitioner Nos. 1 to 5 is concerned, the petitioners have contended that the learned Additional Collector has proceeded to question the legality of the document of transfer on technical ground and the finding is wholly illegal. The petitioners have proceeded to contend thus:

> "It is submitted that immovable property i.e. land was already surrendered to the Panchayat for expansion of the school building and only rights to receive the land/compensation were remained with the petitioner no.6 which can certainly be transferred and alienated/surrendered and or consent can be given for getting the fruits in favour of desired/particular persons. There is no actual physical transaction of any immovable property and only consideration was to be remain collected/received. Only this was done by way of deed/consent letter and Gram Panchayat has paid/given the consideration to the petitioner no.1 to 5. For movable proprietary rights no registration is required."

It has been maintained that the proceedings were conducted in accordance with law and in fact the order dated 11.04.1996 for accepting surrender and allotment of alternative land having become final, further proceedings were only consequential and could not have been put to challenge after four years of issuance of pattas in favour of the petitioners and that too by the revisionist who had no personal interest in the matter and the learned Additional Collector has

acted wholly illegally in accepting the revision petition particularly when the land was sold after due charging of the cost difference.

Having heard learned counsel for the petitioners and having perused the material placed on record and having examined the findings recorded by the learned Additional Collector, this court is satisfied that this writ petition remains totally devoid of merit and deserves to be dismissed without being admitted.

It is not in dispute that the petitioner Nos. 1 to 5 have been sold the land in question by way of private negotiations and such sale has been made by the Panchayat with reference to the option stated by the petitioner No.7; and the petitioner No.7 in his turn is said to have derived the right to receive alternative land from the petitioner No.6; and the petitioner No.6 is alleged to have surrendered his land for the school. The learned Additional Collector has rightly observed that even the very genesis of this sale process, namely some surrendering of title by the petitioner No.6 is itself doubtful and cannot be termed as legal. The alleged title document of the petitioner No.6 has not been placed before this Court either. The petitioner No. 6 whether had any title that he could have and had in fact surrendered to the Panchayat is itself a fact lying only in obscurity. Further, even if it be assumed for the

sake of arguments that the petitioner No. 6 had any such title, whether he had surrendered the same in accordance with law is not borne out from the record. The decision of the Panchayat dated 11.04.1996 so heavily relied upon by the petitioners was taken on an application of the petitioner No. 6 and it was decided to allot free of cost a plot of 40' x 80' size at Ambedkar Colony to him upon handing over and transfer of the plot of his ownership. The operative portion of the decision dated 11.04.1996 (Annex.P/2) reads as under:-

> "अत: सर्व सम्मति से निर्णय लिया जाता है कि प्रार्थी के आवेदन के आधार पर आबादी क्षेत्र अम्बेडकर कोलोनी में 40 X 80 फीट की साईज का एक भूखंड प्रार्थी के अपने स्वामित्व वाले बाड़े के पंचायत को सौंपते ही नि:शुल्क श्री रामकुमार s/o श्री कालूराम टेलर को आवंटित करने की स्वीकृति दी जाती है। बाड़े के हस्तांतरण होते ही प्रार्थी को बापी पट्टा जारी किया जाये।"

It is nowhere found that the said decision dated 11.04.1996 was put into effect and the things essential for bringing about the professed legal relationship were carried out, viz., legal transfer of the land by the petitioner No. 6 to the Panchayat. On the contrary, the record shows just otherwise. It appears that the matter remained dormant for good over three years; and then were drawn the proceedings in the Panchayat on 05.08.1999 (Annex. P/4). It was recorded that the alternative land of 40' x 80' size was proposed to be

allotted to the petitioner Ram Kumar near Veterinary Hospital but there were some disputes about the said land and therefore, plan was prepared for allotment of land to him at Pathik Nagar and he was summoned in the Panchayat. The petitioner No. 6 Ram Kumar had categorically stated before the Panchayat that he had sold the land to Pannalal (Petitioner No. 7) and if Panchayat would agree to allot alternative land, he would execute sale deed with the consent of Pannalal. These assertions, as recorded in the proceedings of the Panchayat dated 05.08.1999, are in the following words:-

> "रामकुमार ने बतलाया कि मैंने भूखण्ड अन्य श्री पन्नालाल s/o भंवरलालजी धाकड़ निवासी ठमाजी का खेडा को विक्रय कर दिया है। पंचायत जमीन की एवज में जमीन देना स्वीकार करे तो मैं पंचायत के पक्ष में पन्नालाल की रजामन्दी से विक्रय पत्र लिख दूंगा।"

It is at once apparent that it was asserted on 05.08.1999 by the petitioner No. 6 that he had sold the land to the petitioner No. 7 Pannalal. Significant fact remains that, as on 05.08.1999, the Panchayat had not allotted any land to the petitioner No. 6; and if at all anything was sold by him, that was his own land, if there was any transferable title available with him. Moreover, as on this date of 05.08.1999, admittedly no deed was executed between the petitioner No. 6 and the petitioner No. 7. However, the Panchayat proceeded to issue

a so called notice inviting objections on 05.08.1999 (Annex. P/4 at page 28) for the intended sale; and further significant fact remains that in this notice dated 05.08.1999, names of the petitioner Nos. 1 to 5 were stated, although up to that point of time, these petitioners were not even named before the Panchayat.

That the entire proceedings were a farce is demonstrated by the impugned proceedings of the Panchayat dated 30.10.1999 (Annex. P/5). In these proceedings it has clearly been recorded at the assertion of the petitioner No. 6 that for no patta having been issued to him for three years, he had sold his land near the school to Pannalal and now, if the Panchayat wanted so, it could be taken with the consent of Pannalal. Then a so-called consent letter was allegedly taken from Pannalal and at his instructions, plots were decided to be sold to the present petitioner Nos. 1 to 5.

Even if it be considered that there was some proposition of the Panchayat to allot alternative land to Ram kumar in lieu of his surrendering the land for the school, firstly there is no legal document showing his land having been so surrendered for school; secondly, there was never any privity between the Panchayat and Pannalal for which any land could have been proposed to be allotted to him; thirdly, the petitioner No. 6 Ram Kumar had asserted in unambiguous

terms on 30.10.1999 and so also on 05.08.1999, that he had sold his land near the school to Pannalal because no patta was issued by the Panchayat for alternative land for three years. In that event, such so-called sale from Ram Kumar to Pannalal could not have been by any other mode except a registered sale deed.

The submissions that some rights emanated in favour of the petitioner No.6 by virtue of the decision of the Panchayat dated 11.04.1996 and only the right to receive the fruits of the decision dated 11.04.1996 remained and could have been alienated without a written instrument is not correct either on facts or in law. As noticed above, Ram kumar has categorically asserted to have sold his land near school to Pannalal, and not any rights under the said decision. Moreover, even the right under the decision dated 11.04.1996 was contingent upon surrender of land and was of receiving immovable property; such right was precisely in an immovable property and it is not correct to suggest that such right, if there be any, could have been orally alienated.

During the course of submissions, learned counsel for the petitioner was pointedly put the question about the title of the petitioner No. 7, Pannalal; and learned counsel could only refer to the document Annexure-P/6. Curiously enough, the said document executed on a Five-rupees stamp

paper by the petitioner No. 6 Ram Kumar on 08.11.1999 is purported to be a sale deed in favour of Panchayat and then states about his having agreed to the proposal of taking over of his land for the school and for allotment of alternative land by the Panchayat; and about his having sold the land to Pannalal because of the Panchayat not allotting him alternative land; and that he was handing over his plot to the Panchayat and now the Panchayat may allot alternative land to or at the instruction of Pannalal. The said document is not worth even its ink; and could least be said to be a document investing the petitioner No. 7 Pannalal with any right, title or even a remotest interest. Then, on 11.11.1999, the petitioner No. 7 had scribed a so-called consent letter (Annex. P/7) for issuance of pattas in favour of the present petitioner Nos. 1 to 5 and for surrendering Ram Kumar's land to the Panchayat with the assertion that he had purchased the land near school from Ram Kumar. As noticed hereinbefore, prior to these baseless documents Annexure P/6 and Annexure P/7, Panchayat had already taken decision to issue pattas in favour of the petitioner Nos. 1 to 5. Entire proceedings turn out to be nothing but absolute illegality and rather a clandestine method to do away with Panchayat's property.

It appears that the things have been stage-managed in such a manner that confusion could be created and the petitioner Nos. 1 to 5 could claim themselves to be bonafide purchasers for value; and for that purpose, some deposit towards extra cost has also been shown by them. However, the fundamental fact remains that to these petitioners no land could have been sold by private negotiations. They had no right whatsoever and were brought on record at the so-called instructions of the petitioner No. 7 Pannalal, who had no right himself. The basic link, of lawful alienation by Ram Kumar to Pannalal, is altogether missing; and so also missing is lawful surrender of land by Ram Kumar to Panchayat.

Learned counsel has relied upon the provisions of Rule 156 to contend that the learned Additional Collector has acted wholly illegally in referring to Rules 145 to 155. Rule 156 reads as under :-

> **"Rule 156. Transfer of Abadi land by private negotiation.-** (1) The Panchayat may transfer any Abadi land by way of sale by private negotiation in the following cases:-
>
> (a) Where any person has a plausible claim of title to the land and an auction may not fetch reasonable price;
>
> (b) Where there is a trespass or for any other reason to be recorded in writing,

> Panchayat thinks that an auction would not be convenient mode of disposal of the land;
>
> (c) Where it is strip of land as per Sub-rules (1) and (2) of Rules 144 and there is only one applicant.
>
> (2) In no case such abadi land, shall be transferred on a rate below index price fixed by Sub-Registrar and conveyed by Vikas Adhikari as prevailing market price for the village.
>
> (3) Such market price in a bazaar or commercial area shall not be less than double the price fixed for residential areas."

A bare look at Rule 156 is sufficient to show that the petitioners Nos. 1 to 5 could not have been sold any land under the said Rule. What to say of any plausible claim of title to the land, the petitioners had absolutely no claim whatsoever for entering into private negotiation with the Panchayat; there was no question of their trespass nor the Panchyat had sold the land to them for the reason that auction would not be convenient mode of disposal nor it were a case of allotment of strip of land to a solitary applicant.

That the petitioners had no right whatsoever to be sold the land in question is amply established by the very case sought to be set up by the petitioners and in that view of the matter, when the learned Additional Collector had set aside such illegal sale, even if at the instance of a private individual,

this court is clearly of opinion that the impugned order serves the cause of justice and does not suffer from any error, illegality or impropriety. No case for interference by this court in extra-ordinary writ jurisdiction is made out. The writ petition remains totally bereft of substance and deserves to be dismissed without being admitted.

The writ petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/